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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

LUDMILA BOIKO, Plaintiff and Appellant, v. COE HOLTAWAY, Defendant and Respondent.	H046327 (Santa Cruz County Super. Ct. No. 18CV02764)

Appellant Ludmila Boiko seeks review of an order denying her request for a civil harassment restraining order against respondent Coe Holtaway. She contends that respondent, in collaboration with a sheriff's department sergeant, engaged in "terror, vandalism and theft" of her property, and then was falsely accused of perjury and "violently arrested." All of that conduct, she argues, was condoned and covered up by County Counsel and by biased, "corrupted" judges. Given the inadequate facts in the record before us, we are unable to grant appellant the reversal she seeks or accommodate her "demand [for] a Grand Jury Trial." Consequently, we must affirm the order.

Background

The record in this appeal offers scant information about what happened below. Appellant initiated her action on September 26, 2018 with a "Request for Civil Harassment Restraining Orders" pursuant to Code of Civil Procedure section 527.6.[1] She alleged that between August 28 and September 23, 2018 she and her caregiver, Slava

[1] All further statutory references are to the Code of Civil Procedure.

Boiko, were repeatedly subjected to "vandalism, theft and violent behavior" by respondent. More specifically, she alleged the following: "He threatened verbally and in support by his violently aggravated actions not just one time that he is in secret conspiracy with our two next doors neighbors gangs and some bad cops and it was confirmed by his actions that he has no fear to commit violent crimes like vandalism, theft, imprisoning people and their belongings. He proud to demonstrate that he has burglar professional skills, able easily to cut locks and/or damage them by blocking with nails or other metal objects. He blocked three doors inside our house and gate to backyard, while was renting just one room and tried to push us out of our house by taken our house over and given us stresses of his unstoppable theft and taking and locking our property away from us." Appellant stated that she and Slava Boiko had been "deeply stressed out emotionally and psychologically on daily basis for 27 days already, not just one time he threatened our safety by his violent actions and with his tights to bad cops and gangs and we had a hard time to get help for initial vandalism and theft that he committed at our property, and it was reoccurring again and again. He is very experienced for 13 years of his criminal career to obstruct justice." Appellant obtained a temporary restraining order against respondent that day.

The hearing on appellant's request took place on October 16, 2018. The minute order of the hearing states that both parties were examined and addressed the issues before the trial court. The court then found "insufficient evidence to support the issuance of a restraining order in this matter," denied the section 527.6 request, and dissolved the temporary restraining order.

Appellant moved for reconsideration the next day, seeking to emphasize that respondent was "extremely dangerous" and in "secret conspiracy" with her neighbors, who were "gangs and career criminals." The ruling on that motion is not in the appellate

record. Nevertheless, appellant filed a timely notice of appeal from the October 16, 2018 order.[2]

Discussion

Section 527.6 provides guidelines for issuing restraining orders based on harassment. The statute defines "harassment" in subdivision (b)(3) as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner." The term "credible threat of violence" is defined as "a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety or the safety of his or her immediate family, and that serves no legitimate purpose." (§ 527.6, subd. (b)(2).) Even the phrase "course of conduct" is spelled out: "Course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email. Constitutionally protected activity is not included within the meaning of course of conduct." (§ 527.6, subd. (b)(1).)

In her petition, liberally construed, appellant did allege a course of conduct by respondent that included verbal threats and violent acts causing substantial emotional distress to her and Slava Boiko. It was then appellant's burden at the hearing to prove

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[2] Plaintiff's notice of appeal does not identify the nature and date of the challenged order except to describe it as "based on fabricated information provided by Coe Holtaway." Her civil case information statement, however, states that her appeal is taken from the October 16, 2018 order.

respondent's harassing or threatening conduct by clear and convincing evidence. (§ 527.6, subd. (i).)

On appeal, we do not independently weigh the evidence, as appellant implicitly assumes. In order to obtain meaningful appellate review, she must offer "legal analysis supported by citations to authority and citations to facts in the record that support the claim of error." (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) " 'In the case where the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment' . . . 'Thus, where the issue on appeal turns on the failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding." ' " (*Juen v. Alain Pinel Realtors, Inc.* (2019) 32 Cal.App.5th 972, 978-979.)

The ultimate decision to grant or deny a restraining order based on the evidence presented is a matter for the trial court's sound discretion, which may not be overturned absent abuse. (Cf. *Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.)

Appellant has not provided this court with a transcript of the proceedings. The record contains no relevant documents beyond her petition and the minute order; there is no reporter's transcript, no declarations from any party or witness, or even a report from the sheriff's deputies who became involved in the apparent conflict. There is thus no evidence this court can rely on to evaluate the sufficiency of the evidence supporting the

trial court's determination that a restraining order was unwarranted. "Where no reporters transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be conclusively presumed correct as to all evidentiary matters. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error." (*In re Estate of Fain* (1999) 75 Cal.App.4th 973, 992, italics omitted.) This is an illustration of the long-settled precept that " 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citation.].)" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609.)

Here, instead of pointing to the evidence she presented below that compelled issuance of a restraining order as a matter of law, appellant merely resorts to calling sheriff's deputies "bad cops" six times in her brief; she also repeatedly accuses the superior court judges of bias, corruption, and "secret conspiracy"; and she asserts that both the courts and law enforcement engaged in "power abuse" and "cover up." These bare assertions, without any supporting facts based on evidence presented at trial, are plainly insufficient to justify reversal on appeal. (See Cal. Rules of Court, rule 8.204(1)(C) [an appellant's opening brief must "[p]rovide a summary of the significant facts limited to matters in the record"].) No abuse of discretion is shown on this record.

Disposition

The order is affirmed.

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ELIA, ACTING P. J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MIHARA, J.

Boiko v. Holtaway
H046327